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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/817,573	03/26/2001	Karl Draganitsch	WRA 32830	7774

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LERNER GREENBERG STEMER LLP
P O BOX 2480
HOLLYWOOD, FL 33022-2480

EXAMINER

TRAN LIEN, THUY

ART UNIT	PAPER NUMBER
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1761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/13/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 09/817,573	Applicant(s) DRAGANITSCH ET AL.	
	Examiner Lien T. Tran	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 6: Lines 9-13 are indefinite because it is not clear what applicant is trying to claim. The steps of subsequently compressing and subsequently shaping are indefinite because it is not known what it is subsequent to; subsequently to what.

Claims 1-3, 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf in view of Biggs et al.

Wolf discloses a method of making closed filled wafer strips. The method comprises the steps of placing a single layer of wafer sheets on a suitable conveyor to form a continuous wafer sheet layer, covering the layer with a filling material and then covering the filling layer with a second layer of wafer sheets in the same manner as that described for the first layer. Under certain circumstances, it may, of course, be necessary or desirable to equalize the thickness of the filled wafer strip by suitable pressing means in the form of rollers or bells. It is also possible to have composite wafers having several layers of filling material and wafer layers. After cooling, the wafer strip is cut into individual wafers (see columns 1-3).

Wolf does not disclose the sugar content of the wafer, providing an outer coating, the wafer being maintained in a warm state sufficient to have an elasticity to be shaped and the type of filling materials.

Biggs et al. disclose a wafer product in which the wafer contains 28.7% sugar and the wafer product has a coating (see column 2).

The amendment to the claims does not define over Wolf because it does not specify the order of the steps. Subsequently shaping just means that the product is shaped; the claim does not define what it is subsequent to. It would have been obvious to one skilled in the art include any amount of sugar in the wafer product depending on the taste and flavor desired. The amount of sugar claimed is conventional as shown by Biggs. It would have been obvious to adjust the sugar content depending on the degree of sweetness and the type of filling material used. For example, if the filling is a sweet cream, then it would have been obvious to make the wafer sweet so that the wafer is compatible with the filling. However, if a non-sweet filling is used, it would have been obvious to make the wafer less sweet to be compatible with the filling. The opposite might be done if one wants a contrasting taste. As to the warm state, it is obvious the wafer sheets in Wolf are in a warm state because they undergo compression by the equalizing roll which is the same as the compressing and shaping claimed. It would also have been obvious to coat the wafer product with a coating material as taught by Biggs et al to obtain different flavor and taste. It would also have been obvious to use any type of filling depending on the flavor and taste desired.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Wolf in view of Biggs et al. as applied to claims 1-3 and 5-6 above, and further in view of Haas Sr. et al.

Neither Wolf nor Biggs et al teach cutting the wafer product into hollow bodies and filling the hollow bodies.

Haas Sr. et al teach wafer product can be cut into many different shapes including hollow wafer, hollow stick etc... (see column 1).

It would have been obvious to cut the wafer product into shape desired as Haas et al teach wafer product can be formed into many different shapes. It would also have been obvious to fill the hollow shape to obtained filled wafer product having different taste, flavor and appearance.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday, Wed-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cano Milton can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

April 11, 2007

Lien Tran
LIEN TRAN
PRIMARY EXAMINER
Group 1700